

APR 30 2008 22:11 FR FULBRIGHT&amp;JAWORSKI 212 318 3111 TO 1323510883821171 P.04

(056,5)

UNITED STATES DISTRICT COURT FOR  
SOUTHERN DISTRICT OF NEW YORKELAINE L. CHAO, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

S.M.E Holding Corp.;  
d/b/a Keyfood Supermarket #23  
Salvatore Bonavita, Individually,

Defendants.

Civil Action

File No. 08-CV-06308-DLC

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED

DOC #:

DATE FILED: 7/21/08

## CONSENT JUDGMENT

Plaintiff, the Secretary, has filed her Complaint and defendants S.M.E. Holding Corp. d/b/a Keyfood Supermarket # 23 and Salvatore Bonavita have appeared by Counsel, and an agreement was reached by all the parties to resolve all the issues raised in this action. Defendants acknowledge their responsibilities pursuant to this agreement, and acknowledge that they will be subject to sanctions in contempt of this Court if they fail to comply with the provisions of this Judgment. Defendants, without admitting or denying the allegations of the Complaint, consent to the entry of this Judgment, and it is therefore upon motion of the attorneys for the Secretary and for good cause shown:

I. ORDERED that defendants, their officers, employees, agents, and all persons acting or claiming to act in the defendants' behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of sections 6, 7, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. Section 201 et seq.), (the Act), in any manner, specifically including:

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(1) Defendants shall not, contrary to Section 6 of the Act, pay to any of their employees who in any workweek are engaged in commerce or in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at rates less than those which are now, or which in the future may become, applicable under Section 6 of the Act.

(2) Defendants shall pay employees at time and one-half their regular hourly rates for all hours worked over 40 per week, and shall not, contrary to Section 7 of the Act, employ any of their employees in any workweek for workweeks longer than the hours now, or which in the future become, applicable under Sections 7 and 15(a)(2) of the Act, unless the employee receives compensation in compliance with the Act.

(3) Defendants shall make, keep, and preserve accurate and complete records of their employees and of the wages, hours, and other conditions and practices of employment maintained by them as prescribed by the Regulations issued pursuant to Section 11(c) of the Act and found at 29 CFR Part 516.

(4) Defendants shall not discharge or take any retaliatory action against any employee because the employee engages in any of the following activities:

a. Discloses, or threatens to disclose, to a supervisor or to a public agency, any activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act;

b. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the Act, or a rule or regulation

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promulgated pursuant to the Act, by the employer or another employer with whom there is a business relationship;

c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act;

II. ORDERED that the defendants are enjoined and restrained from withholding the payment of overtime compensation due their employees listed in exhibit A in the total amount of \$60,986.75. Payment of that sum shall be made in three equal monthly installments as set forth in Exhibit B.

Defendants shall make payments by delivering certified checks or bank checks or money orders to the United States Department of Labor, Wage and Hour Division Regional Office, The Curtis Center, Suite 850 W 170S, Independence Mall West, Philadelphia, PA 19106-3317, payable to the order of "Wage and Hour-Labor", and it is further

III. ORDERED that in the event that any installment payment is not made as set forth in Exhibit B, the remaining installment payments shall become due immediately, and it is further

IV. ORDERED that a copy of each certified check and cover letter when due as set forth in Exhibit A shall be simultaneously sent to Maria Rosado at 625 Fulton Street 7<sup>th</sup> Floor, Brooklyn, New York 11201. The Secretary shall distribute the defendants' payments to the employees and former employees, or to their estates, in accord with Exhibit A.

Defendants shall provide to plaintiff the social security number and last known address of each employee or former employee listed in Exhibit A of this Judgment.

Any sums not distributed to the employees or former employees named in Exhibit A, or to their personal representatives because of inability to locate the proper persons or because of

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such persons' refusal to accept such sums, shall be deposited with the Clerk of this Court who shall deposit such money with the Treasurer of the United States pursuant to 28 U.S.C. 2041 and 2042;

V. ORDERED that neither defendants nor anyone on their behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Judgment; and it is further

VI. ORDERED that if the defendants fail to make any of the instalment payments as set forth above, then the Court shall appoint John Braslow, Esq. as a Receiver. If John Braslow, Esq. is unavailable or declines to act as a Receiver, the plaintiff shall provide the Court with the names of potential Receivers. The Court may appoint a Receiver from those offered by the Secretary or may appoint another Receiver at its discretion. In the event a Receiver is appointed, it is further

VII. ORDERED that defendants shall produce to the Court appointed Receiver all books and records and any other information the Receiver requires to carry out the provisions of this Judgment. In addition, the defendants shall submit to a sworn accounting by an independent certified public accountant and/or the Receiver, and shall testify, if the accountant or Receiver so decides; and it is further

VIII. ORDERED that all the expenses of the accountant or Receiver shall be borne solely by defendants; and it is further

IX. ORDERED that if the Court appoints a Receiver, the Receiver shall serve until the payment of the monetary terms of this Judgment are satisfied; and it is further

X. ORDERED that the Receiver shall have full authority to: collect the Defendants' assets and report his/her findings to the Court and the parties; to redeem and/or liquidate the

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defendants' assets and turn over the proceeds to the Secretary; if the asset is a debt that is due, collect it and turn over the proceeds to the Secretary; to analyze all indebtedness and where deemed appropriate seek restructuring; to analyze all transfers of the defendants' assets; to prevent waste or fraud; and to do all acts and take all measures necessary or proper for the efficient performance of the duties under this Judgment and Order, and it is further

XI. ORDERED that the defendants shall advise all their employees in Spanish and English of the employees' rights under the Fair Labor Standards Act, including the payment of minimum and overtime wages and the rights of employees to engage in activity protected by the Act without fear of retaliation. This advice to employees shall take place within 30 days of the entry of this Judgment on a workday;

XII. ORDERED that defendants shall place posters provided by the Wage and Hour Division with information about the FLSA where employees may view them;

XIII. ORDERED that neither the commencement of this action nor the provisions of this Consent Judgment shall in any way affect, determine, or prejudice any and all legal rights of any employees or former employees of defendants not listed in Exhibit A to file any action against defendants under Section 16(b) of the Act, or likewise for any current or former employee listed in Exhibit A to file any action against defendants under Section 16(b) of the Act for any violations alleged to have occurred after August 21, 2007;

XIV. ORDERED that each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

SO ORDERED:

*The Clerk of Court shall  
close the case.*

*Denise L. Cote*  
HONORABLE DENISE L. COTE  
UNITED STATES DISTRICT JUDGE

5

*July 21, 2008*

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON \_\_\_\_\_

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DATED:

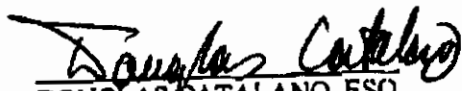
Brooklyn, New York

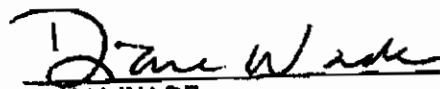
Defendants have appeared by counsel, and consent to the entry of this Judgment.

  
SALVATORE BONAVIDA, Individually

S.M.E HOLDING CORP.  
D/B/A KEYFOOD SUPERMARKET #23

By:   
SALVATORE BONAVIDA, President

  
DOUGLAS CATALANO, ESQ.  
Attorney for Defendant

  
DIANE WADE  
Counsel for Employment Standards  
U.S. Department of Labor

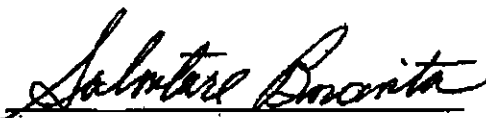


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RESOLVED, that the corporation, S.M.E. Holding Corp. d/b/a Keyfood Supermarket #23 and Salvatore Bonavita hereby ratifies and confirms the offer made to BLAINE L. CHAO, Secretary of Labor, with respect to the alleged violations of the Fair Labor Standards Act of 1938, as amended, and that the corporation consents to the entry of this Judgment against it to be entered in an action which has been filed by the Secretary of Labor against the corporation. The officers of the corporation are authorized to do and perform all acts and things necessary to effectuate the provisions of said Judgment and any or all stipulations, amendments and changes therein.

CORP.  
SEAL

BY:



Salvatore Bonavita

Authorized corporate officer

STATE OF NEW YORK )

:SS:

COUNTY OF KINGS *Bronx* )

On the 4 day of June 2008 before me personally appeared Salvatore Bonavita, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


  
NOTARY PUBLIC

NICOLETTA CARTIGLIA  
Notary Public, State of New York  
No. 01CA4704505  
Qualified in Bronx County  
Commission Expires January 31, 20 10

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## EXHIBIT A

## Summary of Unpaid Wages

## U.S. Department of Labor

Employment Standards Administration

Wage and Hour Division

(Office Address) New York City District Office  
26 Federal Plaza  
Suite 3700  
New York, NY 10278-0190  
212-264-8185

Investigator:

Susan Rivera

Date:

04/30/2008

Employer Fed Tax ID Number

13-3678490

1. Name	2. Address	3. Period Covered by Work Week Ending Dates	4. Act(s)	5. Gross Amounts Due
1. Carrera, Javier		09/03/2005 to 08/24/2006	1	\$3,696.00
2. Dominguez, Mario		08/27/2005 to 08/28/2007	1	\$8,250.00
3. Fuentes, Mauricio		08/27/2005 to 08/25/2007	1	\$10,450.00
4. Huetzel, Leo		08/27/2005 to 08/25/2007	1	\$8,800.00
5. Oropeza, Rafael		08/27/2005 to 08/25/2007	1	\$8,800.00
6. Pena, Luis		08/11/2007 to 08/01/2007	1	\$107.25
7. Perez, Miguel		08/27/2006 to 05/13/2006	1	\$4,455.00
8. Roldan, Regino		02/25/2006 to 08/28/2006	1	\$2,112.00
9. Vera, Ricardo Cesar		08/27/2005 to 08/23/2007	1	\$6,919.00
10. Villar, Alejandro		08/28/2006 to 08/25/2007	1	\$3,932.50
11. Xique, Jorge		08/27/2005 to 05/27/2006	1	\$3,465.00

I agree to pay the listed employees the  
back wages shown due and to mail  
proof of payment to the Wage and Hour  
District Office shown above by

07/22/2008

Signed: \_\_\_\_\_

Employer Name and Address:

Keyfood Supermarket - #23  
S.M.E. Holding Corporation  
3151 Westchester Ave

Bronx, NY 10472

TOTAL \$60,986.76

\* Column 4-Code

PLSA 1  
PLA 2  
SCA 3  
DBLA 4  
DMHPSA 5  
CCPA 6  
FMILA 7

Form WH-56

Page 1

Date: 04/30/2008 4:30:45 PM

Case ID: 1486441

\*\* TOTAL PAGE.11 \*\*



**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

**Date:**

**In Re:**

-v-

**Case #:**

( )

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. No personal checks are accepted.

**J. Michael McMahon, Clerk of Court**

by: \_\_\_\_\_

, Deputy Clerk

APPEAL FORMS

Docket Support Unit

Revised: April 9, 2006

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

NOTICE OF APPEAL

civ. ( )

Notice is hereby given that \_\_\_\_\_  
(party)  
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(day) (month) (year)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

**FORM 1**

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**MOTION FOR EXTENSION OF TIME  
TO FILE A NOTICE OF APPEAL**

civ.

( )

Pursuant to Fed. R. App. P. 4(a)(5), \_\_\_\_\_ respectfully  
(party)  
requests leave to file the within notice of appeal out of time. \_\_\_\_\_  
(party)  
desires to appeal the judgment in this action entered on \_\_\_\_\_ but failed to file a  
(day)  
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the required number of days.]

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( )

\_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment was entered (90 days if the United States or an officer or agency of the United States is a party).

**APPEAL FORMS**

Docket Support Unit

Revised: April 9, 2006

**FORM 2**

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**NOTICE OF APPEAL  
AND  
MOTION FOR EXTENSION OF TIME**

civ. ( )

1. Notice is hereby given that \_\_\_\_\_ hereby appeals to  
(party)  
the United States Court of Appeals for the Second Circuit from the judgment entered on \_\_\_\_\_.  
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time  
\_\_\_\_\_ respectfully requests the court to grant an extension of time in  
(party)  
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, \_\_\_\_\_ states that  
(party)  
this Court's judgment was received on \_\_\_\_\_ and that this form was mailed to the  
(date)  
court on \_\_\_\_\_  
(date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

**APPEAL FORMS**

Docket Support Unit

Revised: April 9, 2006

**FORM 3**

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

-----X  
|  
-V-  
|  
-----X

**AFFIRMATION OF SERVICE**

civ. ( )

I, \_\_\_\_\_, declare under penalty of perjury that I have  
served a copy of the attached \_\_\_\_\_

upon \_\_\_\_\_

whose address is: \_\_\_\_\_

Date: \_\_\_\_\_  
New York, New York

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

**APPEAL FORMS**

Docket Support Unit

Revised: April 9, 2006